

## DETAILED ACTION

### ***Notice of Amendment***

1. In response to the amendment filed on 11/11/2009, amended claim(s) 1, 9, and 11 and withdrawn claim(s) 18-23 and 26-28 is/are acknowledged. The current rejections of the claim(s) is/are *withdrawn*. The following is/are set forth:

### EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kelly Nowak on 01/20/2010.

The application has been amended as follows:

#### **Claim 1 should read as follows:**

1. A fish biopsy device comprising at least one hook having a tip portion, a bend, and a shank, wherein:

said tip portion comprises a tube of a non-pliable material having a sharpened end, wherein said tube has an aperture therein distal said sharpened end; and

said bend is formed from a pliable material of sufficient rigidity so that the sharpened end of the tip portion contacts the flesh of the fish at the time of an initial strike on the device but is sufficiently pliable to straighten under the action of the fish

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and/or force applied via the line attached to the device to disengage the tip portion and free the fish,

**wherein the device is configured to capture a biopsy sample of the fish.**

**Claims 26-28 should read as follows: (Cancelled).**

**The Specification should be amended as follows:**

On **Page 1** insert the following between the Title of the Invention and the Technical Field **at line 2**:

**“This application is a national stage entry of PCT/AU03/01609 filed on December, 2, 2003, which claims priority under 35 U.S.C. 119 based upon AU 2002953016 filed on December, 2, 2002.”**

### ***Election/Restrictions***

3. Claims 1-17, 24, and 25 are allowable. The restriction requirement among species, as set forth in the Office action mailed on 03/31/2009, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 18-23, directed to an allowable device are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

#### ***Allowable Subject Matter***

4. Claims 1-25 are allowed.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey G Hoekstra/  
Examiner, Art Unit 3736

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736